

AMENDED IN ASSEMBLY AUGUST 19, 2013

AMENDED IN ASSEMBLY AUGUST 6, 2013

AMENDED IN SENATE MAY 24, 2013

AMENDED IN SENATE APRIL 8, 2013

SENATE BILL

No. 670

Introduced by Senator Steinberg

February 22, 2013

An act to amend Sections 2225 and 2234 of, and to add Section 2221.5 to, the Business and Professions Code, and to amend Section 11529 of the Government Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 670, as amended, Steinberg. Physicians and surgeons: drug prescribing privileges: investigation.

(1) Existing law authorizes investigators and representatives of the Medical Board of California, among others, to inquire into any alleged violation of the Medical Practice Act or any other federal or state law, regulation, or rule relevant to the practice of medicine or podiatric medicine, and to inspect documents relevant to those investigations, including the inspection and copying of any document relevant to an investigation where patient consent is given.

Existing law requires specified persons, including the administrator of a peer review body, to file a report with the board within 15 days after the effective date of any specified action taken against a licensee for a medical disciplinary cause or reason. Existing law also requires a coroner to make a report to the board, among other specified entities, when he or she receives information that indicates that a death may be

the result of a physician and surgeon's, podiatrist's, or physician assistant's gross negligence or incompetence.

This bill would authorize the board, in any investigation that involves the death of a patient, to inspect and copy the medical records of the deceased patient without the authorization of the beneficiary or personal representative of the deceased patient or a court order solely to determine the extent to which the death was the result of the physician and surgeon's violation of the Medical Practice Act, if the board provides a written request to the physician and surgeon that includes a declaration that the board has been unsuccessful in locating or contacting the deceased patient's beneficiary or personal representative after reasonable efforts.

(2) Existing law requires the board to take action against any licensee who is charged with unprofessional conduct. Unprofessional conduct is defined for this purpose to include, among other things, the repeated failure by a licensee who is the subject of a board investigation, in the absence of good cause, to attend and participate in an interview scheduled by the mutual agreement of the licensee and the board.

This bill would revise that definition of unprofessional conduct to include the repeated failure by a licensee who is the subject of a board investigation, in the absence of good cause, to attend and participate in an interview by the board.

(3) Existing law, the Administrative Procedure Act, authorizes the administrative law judge of the Medical Quality Hearing Panel to issue an interim order suspending a license, or imposing drug testing, continuing education, supervision of procedures, or other licensee restrictions.

This bill would further authorize the administrative law judge to issue an interim order limiting the authority to prescribe, furnish, administer, or dispense controlled substances. The bill would also authorize the board, notwithstanding the authority of an administrative law judge to issue an interim order, to impose limitations on the authority of a physician and surgeon to prescribe, furnish, administer, or dispense controlled substances during a pending investigation if the board has probable cause to believe that the physician and surgeon has prescribed, furnished, administered, or dispensed controlled substances in violation of the Medical Practice Act and the failure of the board to impose those limitations will endanger the public health, safety, or welfare.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 2221.5 is added to the Business and Professions Code, to read:

2221.5. (a) (1) Notwithstanding Section 11529 of the Government Code, the board may impose limitations on the authority of a physician and surgeon to prescribe, furnish, administer, or dispense controlled substances during a pending investigation if both of the following apply:

(A) The board has probable cause to believe that the physician and surgeon has prescribed, furnished, administered, or dispensed controlled substances in violation of the Medical Practice Act.

(B) The failure of the board to impose limitations on the authority of that physician and surgeon to prescribe, furnish, administer, or dispense controlled substances will endanger the public health, safety, or welfare.

(2) The board shall provide written notice of the limitations to the affected physician and surgeon ~~by personal service~~ at least five business days prior to the effective date of any limitations imposed pursuant to this subdivision *by either 24-hour delivery service or personal service.*

(b) In all cases in which the board, pursuant to this section, has imposed any limitations on the authority of a physician and surgeon to prescribe, furnish, administer, or dispense controlled substances, and a petition for an interim suspension order is not filed and served against the physician and surgeon pursuant to Section 11529 of the Government Code within 30 business days of the date on which the board imposed the limitations, the imposed limitations shall be dissolved, *and any record of those limitations shall be removed from the board's Internet Web site.*

(c) The board may adopt regulations or policies and procedures to carry out the provisions of this section.

SEC. 2. Section 2225 of the Business and Professions Code is amended to read:

2225. (a) Notwithstanding Section 2263 and any other law making a communication between a physician and surgeon or a doctor of podiatric medicine and his or her patients a privileged communication, those provisions shall not apply to investigations or proceedings conducted under this chapter. Members of the board, the Senior Assistant Attorney General of the Health Quality

1 Enforcement Section, members of the California Board of Podiatric
2 Medicine, and deputies, employees, agents, and representatives of
3 the board or the California Board of Podiatric Medicine and the
4 Senior Assistant Attorney General of the Health Quality
5 Enforcement Section shall keep in confidence during the course
6 of investigations, the names of any patients whose records are
7 reviewed and shall not disclose or reveal those names, except as
8 is necessary during the course of an investigation, unless and until
9 proceedings are instituted. The authority of the board or the
10 California Board of Podiatric Medicine and the Health Quality
11 Enforcement Section to examine records of patients in the office
12 of a physician and surgeon or a doctor of podiatric medicine is
13 limited to records of patients who have complained to the board
14 or the California Board of Podiatric Medicine about that licensee.

15 (b) Notwithstanding any other law, the Attorney General and
16 his or her investigative agents, and investigators and representatives
17 of the board or the California Board of Podiatric Medicine, may
18 inquire into any alleged violation of the Medical Practice Act or
19 any other federal or state law, regulation, or rule relevant to the
20 practice of medicine or podiatric medicine, whichever is applicable,
21 and may inspect documents relevant to those investigations in
22 accordance with the following procedures:

23 (1) Any document relevant to an investigation may be inspected,
24 and copies may be obtained, where patient consent is given.

25 (2) Any document relevant to the business operations of a
26 licensee, and not involving medical records attributable to
27 identifiable patients, may be inspected and copied if relevant to
28 an investigation of a licensee.

29 (c) (1) Notwithstanding subdivision (b) or any other law, in
30 any investigation that involves the death of a patient, the board
31 may inspect and copy the medical records of the deceased patient
32 without the authorization of the beneficiary or personal
33 representative of the deceased patient or a court order solely for
34 the purpose of determining the extent to which the death was the
35 result of the physician and surgeon's conduct in violation of the
36 Medical Practice Act, if the board provides a written request to
37 the physician and surgeon that includes a declaration that the board
38 has been unsuccessful in locating or contacting the deceased
39 patient's beneficiary or personal representative after reasonable
40 efforts. Nothing in this subdivision shall be construed to allow the

1 board to inspect and copy the medical records of a deceased patient
2 without a court order when the beneficiary or personal
3 representative of the deceased patient has been located and
4 contacted but has refused to consent to the board inspecting and
5 copying the medical records of the deceased patient.

6 (2) The Legislature finds and declares that the authority created
7 in the board pursuant to this section, and a physician and surgeon's
8 compliance with this section, are consistent with the public interest
9 and benefit activities of the federal Health Insurance Portability
10 and Accountability Act (HIPAA).

11 (d) In all cases in which documents are inspected or copies of
12 those documents are received, their acquisition or review shall be
13 arranged so as not to unnecessarily disrupt the medical and business
14 operations of the licensee or of the facility where the records are
15 kept or used.

16 (e) If documents are lawfully requested from licensees in
17 accordance with this section by the Attorney General or his or her
18 agents or deputies, or investigators of the board or the California
19 Board of Podiatric Medicine, the documents shall be provided
20 within 15 business days of receipt of the request, unless the licensee
21 is unable to provide the documents within this time period for good
22 cause, including, but not limited to, physical inability to access
23 the records in the time allowed due to illness or travel. Failure to
24 produce requested documents or copies thereof, after being
25 informed of the required deadline, shall constitute unprofessional
26 conduct. The board may use its authority to cite and fine a
27 physician and surgeon for any violation of this section. This remedy
28 is in addition to any other authority of the board to sanction a
29 licensee for a delay in producing requested records.

30 (f) Searches conducted of the office or medical facility of any
31 licensee shall not interfere with the recordkeeping format or
32 preservation needs of any licensee necessary for the lawful care
33 of patients.

34 SEC. 3. Section 2234 of the Business and Professions Code is
35 amended to read:

36 2234. The board shall take action against any licensee who is
37 charged with unprofessional conduct. In addition to other
38 provisions of this article, unprofessional conduct includes, but is
39 not limited to, the following:

1 (a) Violating or attempting to violate, directly or indirectly,
2 assisting in or abetting the violation of, or conspiring to violate
3 any provision of this chapter.

4 (b) Gross negligence.

5 (c) Repeated negligent acts. To be repeated, there must be two
6 or more negligent acts or omissions. An initial negligent act or
7 omission followed by a separate and distinct departure from the
8 applicable standard of care shall constitute repeated negligent acts.

9 (1) An initial negligent diagnosis followed by an act or omission
10 medically appropriate for that negligent diagnosis of the patient
11 shall constitute a single negligent act.

12 (2) When the standard of care requires a change in the diagnosis,
13 act, or omission that constitutes the negligent act described in
14 paragraph (1), including, but not limited to, a reevaluation of the
15 diagnosis or a change in treatment, and the licensee's conduct
16 departs from the applicable standard of care, each departure
17 constitutes a separate and distinct breach of the standard of care.

18 (d) Incompetence.

19 (e) The commission of any act involving dishonesty or
20 corruption that is substantially related to the qualifications,
21 functions, or duties of a physician and surgeon.

22 (f) Any action or conduct that would have warranted the denial
23 of a certificate.

24 (g) The practice of medicine from this state into another state
25 or country without meeting the legal requirements of that state or
26 country for the practice of medicine. Section 2314 shall not apply
27 to this subdivision. This subdivision shall become operative upon
28 the implementation of the proposed registration program described
29 in Section 2052.5.

30 (h) The repeated failure by a certificate holder, in the absence
31 of good cause, to attend and participate in an interview by the
32 board. This subdivision shall only apply to a certificate holder who
33 is the subject of an investigation by the board.

34 SEC. 4. Section 11529 of the Government Code is amended
35 to read:

36 11529. (a) The administrative law judge of the Medical Quality
37 Hearing Panel established pursuant to Section 11371 may issue
38 an interim order suspending a license, imposing drug testing,
39 continuing education, supervision of procedures, limitations on
40 the authority to prescribe, furnish, administer, or dispense

1 controlled substances, or other license restrictions. Interim orders
2 may be issued only if the affidavits in support of the petition show
3 that the licensee has engaged in, or is about to engage in, acts or
4 omissions constituting a violation of the Medical Practice Act or
5 the appropriate practice act governing each allied health profession,
6 or is unable to practice safely due to a mental or physical condition,
7 and that permitting the licensee to continue to engage in the
8 profession for which the license was issued will endanger the
9 public health, safety, or welfare.

10 (b) All orders authorized by this section shall be issued only
11 after a hearing conducted pursuant to subdivision (d), unless it
12 appears from the facts shown by affidavit that serious injury would
13 result to the public before the matter can be heard on notice. Except
14 as provided in subdivision (c), the licensee shall receive at least
15 15 days' prior notice of the hearing, which notice shall include
16 affidavits and all other information in support of the order.

17 (c) If an interim order is issued without notice, the administrative
18 law judge who issued the order without notice shall cause the
19 licensee to be notified of the order, including affidavits and all
20 other information in support of the order by a 24-hour delivery
21 service. That notice shall also include the date of the hearing on
22 the order, which shall be conducted in accordance with the
23 requirement of subdivision (d), not later than 20 days from the
24 date of issuance. The order shall be dissolved unless the
25 requirements of subdivision (a) are satisfied.

26 (d) For the purposes of the hearing conducted pursuant to this
27 section, the licentiate shall, at a minimum, have the following
28 rights:

29 (1) To be represented by counsel.

30 (2) To have a record made of the proceedings, copies of which
31 may be obtained by the licentiate upon payment of any reasonable
32 charges associated with the record.

33 (3) To present written evidence in the form of relevant
34 declarations, affidavits, and documents.

35 The discretion of the administrative law judge to permit
36 testimony at the hearing conducted pursuant to this section shall
37 be identical to the discretion of a superior court judge to permit
38 testimony at a hearing conducted pursuant to Section 527 of the
39 Code of Civil Procedure.

40 (4) To present oral argument.

(e) Consistent with the burden and standards of proof applicable to a preliminary injunction entered under Section 527 of the Code of Civil Procedure, the administrative law judge shall grant the interim order if, in the exercise of discretion, the administrative law judge concludes that:

(1) There is a reasonable probability that the petitioner will prevail in the underlying action.

(2) The likelihood of injury to the public in not issuing the order outweighs the likelihood of injury to the licensee in issuing the order.

(f) In all cases in which an interim order is issued, and an accusation is not filed and served pursuant to Sections 11503 and 11505 within 15 days of the date on which the parties to the hearing on the interim order have submitted the matter, the order shall be dissolved.

Upon service of the accusation the licensee shall have, in addition to the rights granted by this section, all of the rights and privileges available as specified in this chapter. If the licensee requests a hearing on the accusation, the board shall provide the licensee with a hearing within 30 days of the request, unless the licensee stipulates to a later hearing, and a decision within 15 days of the date the decision is received from the administrative law judge, or the board shall nullify the interim order previously issued, unless good cause can be shown by the Division of Medical Quality for a delay.

(g) If an interim order is issued, a written decision shall be prepared within 15 days of the hearing, by the administrative law judge, including findings of fact and a conclusion articulating the connection between the evidence produced at the hearing and the decision reached.

(h) Notwithstanding the fact that interim orders issued pursuant to this section are not issued after a hearing as otherwise required by this chapter, interim orders so issued shall be subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure. The relief that may be ordered shall be limited to a stay of the interim order. Interim orders issued pursuant to this section are final interim orders and, if not dissolved pursuant to subdivision (c) or (f), may only be challenged administratively at the hearing on the accusation.

(i) The interim order provided for by this section shall be:

- 1 (1) In addition to, and not a limitation on, the authority to seek
- 2 injunctive relief provided for in the Business and Professions Code.
- 3 (2) A limitation on the emergency decision procedure provided
- 4 in Article 13 (commencing with Section 11460.10) of Chapter 4.5.

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